IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 176 (S/S)/ 2004

Harsh Singh son of Sri Govind Singh
R/o Village-Jamanidhar,
P.O. Jharaunkhal,
Dist. Pauri Garhwal ……. Petitioner

Versus

State of Uttaranchal
Through Secretary Forest,
Govt. of Uttaranchal & others …….. Respondents

Date of decision: 17th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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AT NAINITAL

WRIT PETITION NO. 176 (S/S)/2004

Harsh Singh Petitioner.

Versus

State of Uttaranchal through the Secretary,
Forest, Govt. of Uttaranchal
at Dehradun & others. Respondents.

Shri B.D. Upadhyaya learned counsel for the petitioner
Learned C.S.C. for respondents.

Hon'ble P.C. Pant – J.

1. This writ petition has been moved under Article 226 of Constitution of India for writ in the nature of certiorari quashing the decision dated 08.01.2004 taken by the Regularization Committee of Uttaranchal Forest Department. The petitioner has also sought mandamus directing the respondents to regularize the service of petitioner under the Uttaranchal Forest Department Regularization (on Group D post) of Daily Wages Appointment Rules, 2003.

2. Brief facts of the case are that petitioenr was appointed on daily wages as a helper of Forest Guard in the year 1985 in the Forest range Dhumakot, district Pauri Garhwal. He continuously worked till 18.06.1997 when during the course of employment the petitioner fell on a live wire of high power transmission line of electricity and got badly damaged his right hand. He was taken to Safdarjang hospital, New Delhi on 20.06.1997 and on medical advise his right hand was amputated. After getting discharge from the hospital on 30.12.1997 he was advised by the doctors, rest for

further six months. Petitioner could not join his duties till June, 1998 as he was injured during the course of employment and was under medical treatment and medical rest. In July, 1998 he again started working on daily wages in Dhumakot forest range of Garhwal Forest Division as wireless operator. Many daily wage workers including the petitioner filed a writ petition for regularization in service which was tagged with the case of “Putti Lal”. In view of the directions of the Apex Court passed in the case of Putti Lal Vs State of Uttaranchal, the Uttaranchal Forest Department Regularization (on Group D posts) of Daily Wages Appointment rules, 2003 were framed. Under the said Rules all those daily wage workers in service from the period before June 29,1991 and working on the commencement of the said Rules, 2003 were considered for regular appointment by the State Level Selection Committee. The petitioenr was high school passed, as such, he fulfilled all the conditions for regularization. Respondent No.3 Divisional Forest Officer, Garhwal Forest Division recommended the case of petitioner for regularization. However, the petitioner’s case was not considered fairly and a writ petition Lodging No.571 of 2003 was filed for mandamus directing the respondent to regularize his services which was disposed of on 04.12.2003 with the direction to the respondent to consider the regularization of the petitioner. However, regularization of the petitioner was rejected by the Regularization Committee of the respondents on the

flimsy grounds that the petitioner has not worked for 240 days in the year 1997 and 1998. Aggrieved by the same present writ petition has been filed.

3. On behalf of the respondents counter affidavit has been filed and in the brief history in the case contained therein they have admitted that the petitioner worked as daily wager in Diva range of Garhwal forest division since 1985 except the break form 19.06.1997 to June, 1998. In the counter affidavit it is further stated that for regularization 240days work was essential in every calendar year for continuous service, as such, the petitioner did not fulfill the conditions for the regularization.

4. I heard learned counsel for the parties and perused the affidavits and papers annexed thereto.

5. The short question for consideration of this court is whether the petitioner was wrongly denied regularization of his service in Group D post by the respondents.

6. Perusal of the impugned order which is Annexure 9 to the writ petition shows that the petitioner's case was rejected as his continuity in service was found broken in the year 1997 and 1998.

7. The Regularization Committee in its impugned order dated 25.01.2004 itself shows that for purposes of calculating the 'continuous service', in view of Section 2(g) of U.P. Industrial Disputes Act, 1947, the period of sickness or the period interrupted due to an accident which is not due to any fault on the part of

the workman, is to be discounted. The clause (g) of Section 2 of said Act has been quot3ed as under:

"Continuous service means uninterrupted service and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal or a lock out or a cessation of work which is not due to any fault on the part of the workman and a workman, who during a period of 12 calendar months has actually worked in an industry for not less than 240 days shall be deemed to have completed one year of continuous service in the Industry".

8. The above definition of 'continuous service' is given in relation to one calendar year. The same analogy should have been applied for the purposes of calculating the continuous service for the period 1985 when the petitioner was engaged on daily wage Forest Department regularization (Group D post) of Daily Wages Appointment Rules 2003 to the date of commencement of Rules above. Rule 4 of these rules reads as under:

"4. Regulation of daily wages appointments on Group "D" posts:

(1) Any person who :-

a. Was directly appointed on daily wages basis on a group "D" post in the Forest Department under Government service before June 29, 1991 and in continuing in service as such on the date of commencement of these rules; and

b. *Possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in the Forest Department in Group "D' post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.*

(2) *In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes of citizens and other categories shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Cates, Scheduled Tribes and Other Backward Classes) Act (Uttaranchal Adoption and Modification) order 2001, and the Uttar Pradesh Public Services (Reservation for physically Handicapped, Dependents of Freedom Fighters and Ex-Serviceman) Act, 1993 as amended from time to time and the*

orders of the Government in force at the time of regularization under these rules, and

Note : In this connection the provision of reservation shall be fixed vide Uttaranchal Govt. Karmik Department Dehradun's letter No. 1144/karmic-2-2001/53(1)/2001, dated 18-7-2001 and 1415/Karmik-2/2001, dt. 30.8.2001 for the state of Uttaranchal.

(3) For the purpose of sub-rule (1) the Principal Chief Conservator of Forests (PCCF) shall constitute a State Level Selection Committee.

(4) The appointing authority shall, having regard, to the provisions of sub-rule (1), forward complete details of the vacancies of Group "D" Posts and list of the persons working on daily wages basis, along with complete relevant information/record, with regard to Division/Circle/Office under his control, to the Chief Conservator of Forests (Administration) who shall prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of order of appointment on daily wage basis and if two or more persons were appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with such relevant records pertaining to the candidates, as may be

considered necessary, to assess their suitability.

(5) The Section Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4), and if it considers necessary, it may interview the candidates also.

(6) The Selection Committee shall prepare a list of selected candidates in order of seniority, and forward the same to the Chief Conservator of Forests (Administration). The Chief Conservator of Forests (Administration), keeping in view the position/number of the vacancies of Group "D" posts in different Divisions/Circles/Offices and subject to the sub-rule (2) of Rule 4, forward the names of selected candidates, in the order in which their names stand in the list to the appointing authority concerned."

9. In clause (a) of aforesaid Rule for the 'continuous service' is required from the date before 29.06.1991 to the date of commencement of the Rules,2003. In the present case since the petitioner got disabled due to the accident during the course of employment, the respondent should have adopted a humanitarian and sympathetic approach in considering the regularization of the petition particularly when the Divisional Forest Officer also recommended by his letter dated

01.09.2003 (copy annexure-4) to regularize the services of the petitioner. As such, by impugned decision dated 25.01.2004 of the respondent in compliance of the order dated 04.12.2003 passed by this court in Writ Petition lodging No.571(S/S),2003, the petitioner's representation dated 06.01.2004 has wrongly been rejected. Accordingly the impugned decision 25.01.2004 is liable to be quashed.

10. Therefore, the Writ Petition is allowed, the decision dated 25.01.2004 is quashed and the respondents are directed to regularize the services of the petitioner under the Uttaranchal Forest Department Regularization on Group D posts of Daily Wages Appointment Rules, 2003. No order as to costs.

Dated:_August 17th,2004 **(P.C. Pant-J)**

S.S. Negi